IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1509 of 2004

in

SPECIAL CIVIL APPLICATIONNo 2877 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEVANG CO OPERATIVE HOUSING SOCEITY LTD.

Versus

SUB POST MASTER

Appearance:

1. LETTERS PATENT APPEAL No. 1509 of 2004

MR DHARMESH V SHAH for Appellant No.

MS PJ DAVAWALA for Respondent No. 1

..... for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

and

HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 17/08/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. Admit. Ms.Davawala, learned counsel appearing on caveat for the respondent, waives service of notice. By consent, this matter is heard and finally disposed of today by this order.

#. The appellant - Shri Devang Co-operative Housing Society Limited had purchased Kisan Vikas Patra (KVP) of Rs.30,000/- from respondent no.1 - Jawahar Chowk Post Office, Ahmedabad-8 on 06.03.1997 for which certificate Nos.39CC824873-74-85 were issued and its registration number was 59/4. As per the scheme, after a period of five years and six months i.e. on 06.09.2002, the amount of Rs.30,000/- invested by the society became a total amount of Rs.60,000/- on the date of its maturity i.e. on 06.09.2002. The appellant-society addressed a letter to the respondent authority and requested to renew the said amount of Rs.60,000/- by annexing the original certificates. However, the respondent - postal authority by its letter dated 27.09.2002, (Annexure `C' to the main writ petition), informed the appellant - society that Kisan Vikas Patra were issued irregularly on the relevant date, therefore, they were neither ready to renew the same nor to make the payment of the amount which was due on the maturity date to the society. The said letter was received by the appellant - society on 25.10.2002. Aggrieved by this, the appellant - society approached this Court by way of Special Civil Application No.2877 of 2003 in March, 2003 and challenged the action of the respondent authority and prayed for a writ of mandamus or any other appropriate writ, order or direction to issue to the respondent authority to renew its Kisan Vikas Patra with the maturity amount from the date of its maturity or to release the payment of maturity amount of Rs.60,000/- with interest till the date of actual payment. The said writ petition was admitted by the learned Single Judge (Coram : Jayant Patel, J) on 15.07.2003 and fixed it for final disposal on 24.07.2003 and a speaking order was passed by the learned Single Judge while passing the interim order wherein His Lordship observed that :

"It is admitted position that the amount was invested by the petitioner with the respondent

and the amount was accepted by the officers of the Postal Department. Therefore, the respondent has no authority to retain the amount and whether such amount should be paid to the petitioner or not will be decided at the time of final hearing. But, in my, prima facie, view it appears to be a case of unauthorised retention of money after the date of maturity and therefore the respondent should be directed to deposit the amount with this Court. Hence, I am inclined to pass the following order.

4. Since the Post office of respondent no.1 is under respondent no.2, the respondent no.2 is directed to deposit the amount of Rs.60,000/- on or before 23.7.03 with this Court and the same shall be subject to further orders of this Court."

#. In pursuance of the aforesaid order passed by the learned Single Judge, the respondent authority had deposited Rs.60,000/- before the Registrar of this Court. However, due to some or the other reason, the said writ petition could not be finally heard and disposed of by His Lordship Mr.Justice Jayant Patel on the returnable date, i.e. on 24.7.2003 or thereafter and it came to be finally disposed of by the learned Single Judge (Coram : D.N.Patel, J) on 14.07.2004 whereby the writ petition of the appellant-petitioner was dismissed and the Registrar of this Court was directed to permit the petitioner-society to withdraw Rs.30,000/- out of Rs.60,000/- deposited by the respondent authority and the respondent authority was directed to withdraw the remaining amount of Rs.30,000/-. However, neither the appellant society nor the respondent authority has withdrawn the amount as ordered by the learned Single Judge in view of the pendency of this appeal.

#. It was contended by the learned counsel for the appellant that the appellant society is a registered cooperative society under the provisions of the Gujarat Cooperative Societies Act, 1961 and when it had purchased Kisan Vikas Patra of the face value of Rs.30,000/- from respondent No.1 on 6.3.1997, the respondent authority, without any hesitation, accepted the said amount from the appellant society and it was never pointed out to the appellant society that it was not entitled to purchase Kisan Vikas Patra under the Kisan Vikas Patra Rules 1988 (for short "Rules"). It was submitted that, at the relevant time, in March 1997 if it was told to the appellant society, then it would not have invested the

amount with the postal authority in Kisan Vikas Patra and it would have invested the amount in any other nationalised banks or in any other schemes framed by the Union of India or the State Government. It was submitted that having accepted the amount in 1997 and when it became due in September 2002, then at that time, the respondent authority cannot say no to pay the interest to the society or Kisan Vikas Patra purchased by it.

#. However, on behalf of the respondent authority it was vehemently submitted by Ms.Davawala that only persons or bodies mentioned in Rule 6 of the Rules can purchase Kisan Vikas Patra, therefore, the petitioner being a cooperative society cannot purchase or acquire Kisan Vikas Patra under that Rules and if it has purchased it, then as per the provisions of Rule 13 of the Rules, it shall not be entitled for any interest on it. She, therefore, submitted that the learned Single Judge has rightly dismissed the petition, as, dehors the Rules the appellant petitioner had purchased Kisan Vikas Patra, therefore, it is not entitled for any interest on it.

#. We have heard the learned advocate Shri Shah for the appellant and Ms.Davawala for the respondent. We have also carefully gone through the judgment and order passed by the learned Single Judge dismissing the writ petition. From the judgment of the learned Single Judge, it appears that the learned Single Judge refused to place the reliance on the judgment of another learned Single Judge delivered on 27.7.2001 in Special Civil Application No.12508 of 2000 which was confirmed by the Division Bench of this Court in Letters Patent Appeal on the ground that the said judgment was delivered in Public Provident Fund (PPF) matter, whereas the instant petition was arising out of Kisan Vikas Patra Rules of 1988 and the Rules are very clear under which the appellant society was not entitled to purchase Kisan Vikas Patra. It also appears to us that the learned Single Judge has relied upon on his own judgment delivered in Special Civil Application No.7913 of 1990 on 23.6.2004 wherein the question of purchasing National Savings Certificate (NSC) was there. Rules of National Savings Certificate (VI Issue) Rules, 1981 were pari-materia to the Rules of Kisan Vikas Patra Rules, 1988.

#. It is no doubt true that there are specific Rules framed for purchasing Kisan Vikas Patra under which the appellant society as such would not be entitled to purchase Kisan Vikas Patra. In spite of this, the fact is that the respondent authority without informing or bringing it to the notice of the appellant society

accepted the said amount way back in 1997 and it is only when in 2002 after a lapse of period of more than 5 and 1/2 years when the appellant society had applied for renewal of it, then only the appellant society was told that neither the said amount can be renewed nor it can get the amount with interest on it on its maturity date. If the appellant petitioner was told in 1997, then it being a society, it would have definitely invested the said amount in any other nationalised saving scheme. Having accepted the said amount from the appellant petitioner without bringing it to its notice that it was not entitled to purchase Kisan Vikas Patra, then in our considered opinion, it would not like good in the mouth of the respondent authority to say that the appellant society was not entitled for interest on Kisan Vikas Patra. The principle of unjust enrichment would also apply to the Government and its agencies. Having retained the amount of Rs.30,000/- for a period of more than 5 years, the respondent authority cannot take the stand that it would not pay the amount of interest.

#. In our considered opinion, the judgment of the Honourable Supreme Court in the case of Union of India Vs. Deoki Nandan, reported in AIR 1992 SC 96 relied upon by the learned Single Judge in his judgment has no application to the facts of this case. When the judgment of another learned Single Judge of this Court in PPF matter is confirmed by the Division Bench, then in our considered opinion, the same was binding to the learned Single Judge. Merely because the Rules are different, that would not be a ground for discarding the said judgment. The principle remains the same. In the matter of Special Civil Application No.12508 of 2000 almost the same question was there regarding irregularity committed while opening PPF Account. Here, in the instant case, there was irregularity committed by the appellant petitioner society in purchasing Kisan Vikas Patra. If the interest was allowed by the learned Single Judge of this Court in PPF matter, then we are of the considered opinion that on the same line, the appellant petitioner society was entitled to have interest on Kisan Vikas Patra purchased by it from the respondent authority because the appellant petitioner society was bonafide purchaser of Kisan Vikas Patra and for no fault of it, it cannot be penalised by withholding interest for a period of 5 and 1/2 years of Kisan Vikas Patra purchased by it way back in March 1997.

#. In view of the above discussion, this appeal is allowed. The judgment and order dated 14.7.2004 passed by the learned Single Judge dismissing Special Civil

Application No.2877 of 2003 is hereby quashed and set aside and the main Special Civil Application No.2877 of 2003 is accepted. It is held that the appellant petitioner society was entitled to have interest of Rs.30,000/- on the principal amount of Rs.30,000/- which it had invested by way of Kisan Vikas Patra with the respondent authority.

9.1 By the interim order dated 15.7.2003 passed by the learned Single Judge of this Court, the respondent authority had already deposited the total sum of Rs.60,000/- which may now be paid to the appellant society by the Registrar of this Court by way of Account Payee Cheque in its name forthwith.

##. The appeal is allowed accordingly, however, there shall be no order as to costs.

(B.J.Shethna,J)

(M.C.Patel,J)
(pathan)